

Public utility. The term “public utility” means any person who owns or operates facilities used for transmission of electric energy in interstate commerce or sales of electric energy at wholesale in interstate commerce.

Public-utility company. The term “public-utility company” means an electric utility company or a gas utility company. For the purposes of this subchapter, the owner-lessors and owner participants in lease financing transactions involving utility assets shall not be treated as “public-utility companies.”

Service. The term “service” means any managerial, financial, legal, engineering, purchasing, marketing, auditing, statistical, advertising, publicity, tax, research, or any other service (including supervision or negotiation of construction or of sales), information or data, which is sold or furnished for a charge.

Service company. The term “service company” means any associate company within a holding company system organized specifically for the purpose of providing non-power goods or services or the sale of goods or construction work to any public utility or any natural gas company, or both, in the same holding company system.

State commission. The term “state commission” means any commission, board, agency, or officer, by whatever name designated, of a state, municipality, or other political subdivision of a state that, under the laws of such state, has jurisdiction to regulate public-utility companies.

Subsidiary company. The term “subsidiary company” of a holding company means—

(1) Any company, 10 percent or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company; and

(2) Any person, the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary for the rate protection of utility customers

with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon subsidiary companies of holding companies.

Voting security. The term “voting security” means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company. For the purposes of this subchapter, the term “voting security” shall not include member interests in electric power cooperatives.

[Order No. 667-A, 71 FR 28457, May 16, 2006, as amended by Order 667-B, 71 FR 42755, July 28, 2006; Order 731, 74 FR 68529, Dec. 28, 2009]

§ 366.2 Commission access to books and records.

(a) *In general.* Unless otherwise exempted by Commission rule or order, each holding company and each associate company thereof shall maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records as the Commission determines are relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates. However, for purposes of this subchapter, no provision in the subchapter shall apply to or be deemed to include:

(1) The United States;

(2) A state or political subdivision of a state;

(3) Any foreign governmental authority not operating in the United States;

(4) Any agency, authority, or instrumentality of any entity referred to in paragraphs (a)(1), (2), or (3) of this section; or

(5) Any officer, agent, or employee of any entity referred to in paragraphs (a)(1), (2), (3), or (4) of this section as such in the course of his or her official duty.

(b) *Affiliate companies.* Unless otherwise exempted by Commission rule or order, each affiliate of a holding company or of any subsidiary company of a holding company shall maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records with respect

to any transaction with another affiliate, as the Commission determines are relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(c) *Holding company systems.* The Commission may examine the books, accounts, memoranda, and other records of any company in a holding company system, or any affiliate thereof, as the Commission determines are relevant to costs incurred by a public utility or natural gas company within such holding company system and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(d) *E-Tag Authors and Balancing Authorities.* E-Tag Authors and Balancing Authorities must take appropriate steps to ensure Commission view-only access to complete electronic tags (e-Tags), or any successor to e-Tags, used to schedule the transmission of electric power in wholesale markets, by designating the Commission as an addressee on the e-Tags. E-Tag Authors must include the Commission on the list of entities with view-only rights to the e-Tags. Balancing Authorities located within the United States must validate the inclusion of the Commission on the e-Tag before those e-Tags are electronically delivered to an address specified by the Commission. The complete e-Tag data to be made available under this section shall consist of:

(1) e-Tags for interchange transactions scheduled to flow into, out of or within the United States' portion of the Eastern or Western Interconnections, or into the Electric Reliability Council of Texas from the United States' portion of the Eastern or Western Interconnection; or from the Electric Reliability Council of Texas into the United States' portion of the Eastern or Western Interconnection; and

(2) Information on every aspect of the e-Tag, including all applicable e-Tag IDs, transaction types, market segments, physical segments, profile sets, transmission reservations, and energy schedules. In addition, e-Tag Authors and Balancing Authorities must also make available, upon request to the e-

Tag Authors and Balancing Authorities, access to the complete e-Tags, or any successor to e-Tags, used to schedule the transmission of electric power in wholesale markets, to Regional Transmission Organizations, Independent System Operators, and their Market Monitoring Units, on an ongoing basis, subject to appropriate confidentiality restrictions.

(e) *Confidentiality.* No member, officer, or employee of the Commission shall divulge any fact or information that may come to his or her knowledge during the course of examination of books, accounts, memoranda, or other records as provided in this section, except as may be directed by the Commission or by a court of competent jurisdiction.

[Order No. 667–A, 71 FR 28457, May 16, 2006, as amended by Order No. 771, 77 FR 76379, Dec. 28, 2012]

§ 366.3 Exemption from Commission access to books and records; waivers of accounting, record-retention, and reporting requirements.

(a) *Exempt classes of entities.* Any person that is a holding company solely with respect to one or more of the following will be exempt from the requirements of §§ 366.2 and 366.21 and any associated service company will be exempt from the requirements of §§ 366.2, 366.22, and 366.23; such person need not make the filings provided in § 366.4(a) or (b):

(1) Qualifying facilities under the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 *et seq.*);

(2) Exempt wholesale generators; or

(3) Foreign utility companies.

(b) *Exemptions of additional persons and classes of transactions—*(1) *Commission authority to exempt additional persons and classes of transactions.* The Commission shall exempt a person or class of transactions from the requirements of § 366.2 and the accounting, record-retention, and reporting requirements of §§ 366.21, 366.22, and 366.23 if, upon individual application or upon the motion of the Commission—

(i) The Commission finds that the books, accounts, memoranda, and other records of any person are not relevant to the jurisdictional rates of a